

SUPPLEMENTAL INFORMATION TO

PROPOSED ARMY ALTERNATE PROCEDURES TO 36 CFR PART 800

This packet provides supplemental information to the Proposed Army Alternate Procedures to 36 CFR Part 800 to assist you in your review. Included in this packet is a general overview that identifies the goals and objectives in developing the procedures, a summary of the major concerns by stakeholder with an explanation of how the issues were addressed in the revised document, and a section-by-section summary of the procedures.

A **ADVISORY COUNCIL ON**
HISTORIC PRESERVATION

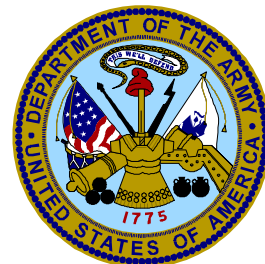


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I. INTRODUCTION: PROPOSED ARMY ALTERNATE PROCEDURES (AAP) TO 36 CFR PART 800

Since the second draft of the proposed Army counterpart regulation to 36 CFR Part 800 was distributed, the Advisory Council on Historic Preservation (Council) has published revised regulations that allow us to take a new approach to the Army's efforts¹. While the Council's old regulations only authorized counterpart regulations to 36 CFR Part 800, the Council's revised regulations allow agencies to prepare alternate procedures to substitute for 36 CFR Part 800(B).

The title of the current draft reflects our decision to develop alternate procedures by following 36 CFR § 800.14 of the revised regulations, rather than continuing to develop counterpart regulations under the Council's old regulations. While notice of the alternate procedures will still be published in the Federal Register, they will not be codified as a regulation. Additionally, the Council has authorized the Army to develop the AAP as an entirely optional procedure for installation commanders. Although the AAP will improve compliance process efficiency and reduce adverse mission impacts, installation commanders will exercise their discretionary authority to choose to operate either under the AAP (when finalized) or the current existing regulations (36 CFR 800). When finalized, the AAP will serve as an optional tool in the installation's compliance toolbox.

The Army and the Council have significantly changed the alternate procedures to accommodate the many comments received on the second draft of the counterpart regulations. While some of the language from the second draft has been retained, the document has been revised substantially in terms of structure and language. As a result, the extensive revisions precluded us from including a redline strikeout version that documents the significant changes that were made between the second draft and the document that has been included here. To assist you in your review, we have included a summary of the current draft and a record of your concerns by stakeholder and our responses to them. We hope that you will take time to review the other stakeholder comments so that you will have an understanding of their issues as well.

Our goals in preparing the alternate procedures were to develop a process that provides:

- effective, proactive management of historic properties at Army installations as a first step;
- an integrated role for consulting parties;
- streamlined compliance process based on Army internal policies, programs, and structure;
- compliance authority and responsibility at the installation commander level;
- administrative remedies for consulting parties seeking problem resolution;
- flexible application by installations; and,
- continued Council review of Army programs and installation compliance.

¹ In this Supplemental Information packet and the Army's Alternate Procedures, all references to the Council's regulations at 36 CFR Part 800 refer to the revised Council regulations published in the Federal Register on Tuesday, May 18, 1999 (FR, Vol. 64, No. 95: pp. 27044-27087)

II. SUMMARY OF MAJOR ISSUES AND CHANGES MADE TO THE ARMY ALTERNATE PROCEDURES – COMMENTS ARE IN BOLD FACE AND CHANGES MADE ARE ✓

ARMY MAJOR COMMAND COMMENTS

- **Limits Installation Commander and MACOM authority**
 - ✓ Installation commander approves and signs Historic Properties component of ICRMP [XXX.6 (a)(1)(iv)(C)] and subpart C(a)
 - ✓ ACSIM (DEP and AEC) removed from certification process [XXX.14]
 - ✓ ACSIM (DEP and AEC) review and comment on draft plan only [XXX.14(d)]
 - ✓ Installation commander consults directly with ACHP [XXX.16(a)]
 - ✓ MACOM reviews, comments, and participates in resolution of disputes [subpart F and XXX.21]
 - ✓ Installation commander has discretionary authority to follow AAP or existing 36 CFR Part 800
- **Limits Flexibility**
 - ✓ Provides optional application of either the Army's alternate procedures or the Council's revised regulations, 36 CFR Part 800 [XXX.7]
 - ✓ Eliminates "how to," and focuses on basic mandatory minimum requirements [XXX.1(b)(3)] Definition of installation expanded to accommodate ARNG and USARC [XXX.5]
 - ✓ Provisions for plan amendment to accommodate changed circumstances [XXX.19]
- **Increased Liability – Risk of Litigation**
 - ✓ Will not to codify in Code of Federal regulations, will adopt as an alternate procedure [see Council's revised regulations, 36 CFR Part 800]
 - ✓ AR 200-4 and DA PAM 200-4 referenced as guidance only [XXX.1(a)(3)]
 - ✓ Requires objections be raised with Army/ACHP prior to resorting to litigation [XXX.21 and 22]
- **Increases ACHP authority/Decreases SHPO involvement**
 - ✓ Installation establishes the level of SHPO involvement in their program through SOPs in their plan [XXX.12(a)(6)(v)]
 - ✓ SHPO contact maintained through annual program review meeting [XXX.12(a)(6)(ii)]
 - ✓ Supports use of SHPO expertise [XXX.6(c)(2)]
 - ✓ ACHP only certifies HPC portion of ICRMP [XXX.16]
 - ✓ ACHP must certify using established criteria [XXX.16(b)]
 - ✓ ACHP only revisits certification where documented pattern of non-compliance [XXX.24(a)]
 - ✓ ACHP continues oversight role granted by statute [Subpart G]
- **Timing: need to adjust programming to meet new procedures**
 - ✓ Installations only required to have a draft plan in five years [XXX.14(a)] and XXX.2(a)]
 - ✓ Permits at least five years to adjust to new procedures

- **Objectives can be accomplished with a programmatic agreement**
 - ✓ Allows resolution of adverse effects internally by installation staff; existing PAs do not [XXX.12(a)(6)(i)(E-G)]
 - ✓ No assurance of future ACHP acceptance of PAs
- **Increased paperwork, staffing and resource requirements**
 - ✓ No project-by-project staffing to HQDA [XXX.12]
 - ✓ No formal outside agency (ACHP/SHPO/others) involvement in project-by-project review and agreement [XXX.12]
 - ✓ Annual review and monitoring based on existing requirement [XXX.12(a)(6)(ii)]
 - ✓ Staffing of HPC only occurs once every five years [Subpart C]
 - ✓ Internal staffing procedures follow AR 200-4 [XXX.14]
- **Miscellaneous Concerns**
 - ✓ Eliminated mandatory requirement for listing five years of undertakings
 - ✓ Removed reference to internal Army reporting systems (ISR, EQR, EPR and ECAS)
 - ✓ Limits section 106 consultation to historic properties component of ICRMP [XXX.1(b)(1)]
 - ✓ Clarified CRM position as program manager, not technical expert [XXX.8]
 - ✓ Certification and recertification processes clarified [XXX.16 and XXX.20]

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS COMMENTS

- **Term ‘traditional’ should be reinserted in describing properties of ‘religious and cultural importance’ to understand that we are dealing with multiple tribes and traditions**
 - ✓ This was a global change made in the alternate procedures
- **Request signatory authority for HPCs**
 - ✓ This was granted in XXX.16(a)
- **Process does not put tribes on a true government-to-government relationship**
 - ✓ Added definition of *government-to-government relations* and referenced in tribal consultation [XXX.5]
 - ✓ Relationship is now a responsibility of installation commander [XXX.6(a)(1)(iv)(G)]
 - ✓ Government-to-government relationship between installation commander and tribes referenced under tribal description in the *Participants* section [XXX.6(d)(1) and (2)]
 - ✓ SOP for section 106 participant role in HPC implementation, must provide for consultation with tribes on a government-to-government basis [XXX.12(a)(6)(v)(A)]
- **Request THPO parity with SHPO, they are not just interested parties**
 - ✓ Both SHPO and THPO listed as consulting parties [XXX.1(b)(3) and XXX.5]
 - ✓ Revised participants section to ensure greater parity [XXX.6(c) and (e)]
 - ✓ Both included in identification of consulting parties to HPC development [XXX.10(a)(1) and (2)]

- ✓ Both included in HPC implementation section [XXX.12(a)(6)(v)(B)]
- ✓ Both SHPO and THPO included in Participant and public review section [XXX.15(b)]
- ✓ Criteria for certification includes a requirement for consultation with both [XXX.16(a)(2) and (3)]
- ✓ Both SHPO and THPO included in Major Amendment process [XXX.19]
- **Clarify role and goals of consultation**
 - ✓ Expanded definition of *tribal consultation* [XXX.5]
 - ✓ Added definition of *coordination* to distinguish between *consultation* and *coordination* [XXX.5]
 - ✓ Definition of *government-to-government relations* further defines consultation responsibilities when working with Federally recognized Indian tribes [XXX.5]
 - ✓ Installation commander responsible for ensuring consultation with tribes allows for a reasonable opportunity to identify concerns on historic properties of significance to them [XXX.6(d)(2)]
 - ✓ Coordinator of Native American Affairs' role for facilitating Army/tribal consultation [XXX.9(b)]
 - ✓ Consultation for inadvertent discovery and for Emergency Actions must be mutually acceptable and expeditious [XXX.12(a)(6)(iii)]
- **Include definition of APE, and request more coordination to determine APE**
 - ✓ Added definition of APE, can be influenced by scale and nature of undertaking [XXX.5]
 - ✓ Coordination with consulting parties on developing SOP for identifying properties and defining APEs [XXX.12(a)(6)(i)(A)]
- **Encourage use of tribal expertise for identification and treatment**
 - ✓ This was addressed in XXX.13(d)
 - ✓ Also included a reference to THPOs for tribal expertise [XXX.13(e)]
- **Reference HPC instead of the entire ICRMP**
 - ✓ This was a global change made in the alternate procedures
- **Role of ACHP is not clear in certification process**
 - ✓ Clarified *Council Review and Certification* section [XXX.16]
 - ✓ Council's role clarified in *Administrative Remedies* section [Subpart F]
- **Confidentiality issues. Let tribes designate areas of critical concern which agency would have to come to tribes to discuss**
 - ✓ Included in PLS under HPC development section [XXX.12(a)(2)(vi)]
- **Concern with Tribal involvement in identification and treatment**
 - ✓ Identifies up front in the *Purpose* section, the role of consulting parties [XXX.1(b)(3)]
 - ✓ Clarifies involvement of consulting parties in HPC development [XXX.11(c)]
 - ✓ Requires close coordination with tribes in implementation process [XXX.12(a)(6)(v)(A)]

- **Solve enforceability issue – compare with MOAs and PAs as a legally binding agreement**
 - ✓ Once in effect, Army alternate procedures will entirely replace 36 CFR Part 800(B) [XXX.3]
 - ✓ HPC, once signed, becomes a legal compliance document [subpart D (a)]
- **Definition of professional standards needs to be changed where Tribe is making determination**
 - ✓ Definition of professional standards broadened to include tribes without regard to professional standards [XXX.5]
- **Issue with Army installations to recognize tribal sovereignty**
 - ✓ Added SOP for tribal participation must recognize tribal sovereignty [XXX.12(a)(6)(v)(A)]

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS AND STATE HISTORIC PRESERVATION OFFICERS COMMENTS*

- **Concern with SHPO role in the ongoing participation and implementation of the HPC and use of SHPOs professional expertise**
 - ✓ Identifies, up front in *Purpose* section, the roles of consulting parties [XXX.1(b)(3)]
 - ✓ Identifies unique expertise and continued role of SHPO in *Participants* discussion [XXX.6(c)]
 - ✓ Clarifies involvement of consulting parties in HPC development [XXX.11(c)]
 - ✓ Requires close coordination with SHPO in implementation process [XXX.12(a)(6)(v)(B)]
 - ✓ Continued SHPO participation in implementation of HPC [XXX.12(a)(6)(v)(B)]
 - ✓ Annual review and monitoring by SHPO [XXX.12(a)(6)(ii)]
 - ✓ Promotes SHPO/installation relationship without limits [XXX.13(e)]
- **It would be appropriate to reference the Secretary's standards as the basis for preservation**
 - ✓ Management goals and practices must be comparable to the relevant Secretary of the Interior Standards and Guidelines [XXX.12(a)(5)(A)]
- **It is not clear if the SHPO is considered an interested party or is recognized to have special status**
 - ✓ SHPO identified as a consulting party up front in the *Purpose* section [XXX.(1)(b)(3)]
 - ✓ SHPO included in definition of consulting party [XXX.5]
 - ✓ Term 'interested party' removed from the procedures

* NCSHPO incorporated SHPO concerns in their formal comments dated 3/1/99, and to respond to their issues we have combined NCSHPO and SHPO comments into one section.

- **No role for SHPO consultation in the implementation of the ICRMP or in revisions and updates to the ICRMP. Ongoing consultation with the SHPO is not a required component of the plan.**
 - ✓ Clarified up front in *Purpose* that alternate procedures only addresses HPC section of ICRMP [XXX.1(b)(1)]
 - ✓ SHPO identified as a consulting party up front in the *Purpose* section [XXX.(1)(b)(3)]
 - ✓ SHPO included in definition of consulting party [XXX.5]
 - ✓ Identifies unique expertise and continued role in *Participants* discussion [XXX.6(c)]
 - ✓ Adds SOP on External review and monitoring [XXX.12(a)(6)(ii)]
 - ✓ Adds SOP to ensure that SHPO has continued role in HPC implementation [XXX.12(a)(6)(v)(B)]
 - ✓ SHPO included in *Participant and Public Review* section [XXX.15(b)]
 - ✓ SHPO included in Major amendment process [XXX.19]
 - ✓ SHPO role in recertification process [XXX.20(a)(2)]
- **The SHPO should have an opportunity to review and comment on the annual report**
 - ✓ Emphasized annual review and monitoring as a critical step in ensuring HPC implementation [XXX.5, definition of annual review and monitoring]
 - ✓ Included SOP for annual review and monitoring [XXX.12(a)(6)(ii)]
 - ✓ In addition to reviewing past and future undertakings, SOP requires annual evaluation of effectiveness of HPC and need for amendments [XXX.12(a)(6)(ii)]
- **SHPO role in certification is minimal**
 - ✓ SHPO review Draft HPC and NEPA document [XXX.15(b)(1)(ii)]
 - ✓ SHPO invited to sign HPC [XXX.15(b)(2)]
 - ✓ Installation must consult with SHPO that objects to the Draft HPC, and documentation to this effect must be submitted to Council [XXX.15(b)(5)]
 - ✓ Council certification requirement for approving HPC includes written views of SHPO and summary of consultation with SHPO [XXX.16(a)(2) and (3)]
 - ✓ SHPO participates in plan amendment process [XXX.19]
 - ✓ Installation consults with external parties in recertification [XXX.20]
 - ✓ *Administrative Remedies* section provides a process whereby the SHPO can object to certification [Subpart F]
- **Regulation does not provide guidance on the continued day-to-day coordination between the CRM and the SHPO staff**
 - ✓ Establishes alternate procedures as minimum requirements for compliance [XXX.1(b)(3)]
 - ✓ Identifies unique expertise and continued role in *Participants* discussion [XXX.6(c)]
 - ✓ Added SOP to ensure that section 106 participants have continued role in HPC implementation [XXX.12(a)(6)(v)(B)]
 - ✓ Use of SHPO expertise is added to *Acquiring Professional Expertise* section [XXX.13(e)]
 - ✓ Promotes SHPO/installation relationship without limits [XXX.13(e)]

- ✓ Built in flexibility in the SOP process that makes it possible for the installation/SHPO to determine the degree of SHPO involvement in day-to-day actions
- **Issue of data exchange between SHPOs and installations; it is essential to maintain an up-to-date inventory of all historic properties**
 - ✓ Expands *Shared Public Data* section beyond just public disclosure [XXX.12(a)(6)(vi)]
- **Regulations do not require communication between the Army and SHPO once the ICRMP is finalized**
 - ✓ Clarified up front in *Purpose* that alternate procedures only addresses HPC section of ICRMP [XXX.1(b)(1)]
 - ✓ Identifies unique expertise and continued role in *Participants* discussion [XXX.6(c)]
 - ✓ SOP for annual review and monitoring [XXX.12(a)(6)(ii)]
 - ✓ Added SOP to ensure that section 106 participants have continued role in HPC implementation [XXX.12(a)(6)(v)(B)]
 - ✓ SHPO role in providing professional expertise, encourage cooperative agreements for technical assistance [XXX.13(e)]
 - ✓ Built in flexibility in the SOP process that makes it possible for the installation/SHPO to determine the degree of SHPO involvement in day-to-day actions
- **Need to include the purpose of the plan to preserve and protect resources, and for pro-active planning and management**
 - ✓ Encourages thoughtful consideration and planning, and emphasizes management based approach in *Purpose* section [XXX.1(a)(1)]
 - ✓ Flexibility added to process to provide for pro-active management of resources rather than just mitigation of adverse effects [XXX.12(a)(5)]
- **Add provisions for disputes resolution**
 - ✓ *Administrative Remedies* section added [Subpart F, XXX.21 and XXX.22]
- **Revise language on categorical exclusions section**
 - ✓ Provides for Council approval of all categorical exclusions developed as part of SOPs, and allows Council termination with 30 days notice [XXX.12(a)(4)]
 - ✓ Allows blanket categorical exclusions for certain types of activities associated with ordnance [XXX.18(a)(3)]
- **If cultural resource laws and regulations are not acknowledged in this document, in which other Army documents are they referenced?**
 - ✓ AR 200-4 sets forth the Army's policy for complying with cultural resource laws and regulations [XXX.1(a)(3)]

NATIONAL TRUST FOR HISTORIC PRESERVATION COMMENTS

- **Distinction between required ICRMP content and SOPs is not clear**
 - ✓ Clarified up front in *Purpose* that alternate procedures only addresses HPC section of ICRMP [XXX.1(b)(1)]
 - ✓ Revised section to clarify role of SOPs in the HPC [XXX.12(a)(6)]
- **Public participation section needs to be developed in more detail**
 - ✓ Added definition of Section 106 participants that includes the public [XXX.5]
 - ✓ CRM serves as a liaison between the Army and the public [XXX.8(c)(3)]
 - ✓ Include public in SOP for section 106 participant's role in HPC implementation [XXX.12(a)(6)(v)(C)]
 - ✓ HPC must be developed with public participation [subpart D(a)]
 - ✓ *Participant and Public Review* section revised and expanded [XXX.15(a)]
 - ✓ Council criteria for certification includes requirement for considering views of the public and documentation that plan was developed with public participation [XXX.16(a) and (b)(4)]
- **Concern with language on transfer of historic properties out of federal ownership**
 - ✓ This language was removed--HPC development section revised to be less proscriptive [XXX.12]
 - ✓ Mitigation of adverse effects must include provisions for preservation covenants and the degree to which to be determined in consultation with consulting parties [XXX.12(a)(6)(i)(F)]
 - ✓ Provisions for disposal through transfer to be included as a category of undertakings [XXX.12(a)(3)(i)]
 - ✓ Transfer included as an alternative to consider for adverse effects; again, this is to be determined in consultation [XXX.12(a)(6)(i)(E) and (F)]
- **Revise procedures so HQDA and ACHP review of draft ICRMP earlier in the process (concurrent with public review)**
 - ✓ Installation commander considers HQDA and MACOM comments prior to releasing draft HPC and NEPA document [XXX.14(e)]
 - ✓ Tribal/SHPO/THPO/Council review concurrent with public review [XXX.15(b)]
- **Believe the plans will be more effective if installations are encouraged to set priorities for preservation**
 - ✓ Built in flexibility in the SOP process makes this possible; installations can consult with consulting parties on the issue of prioritizing resources in applying best management practices [XXX.12(a)(6)(i)(C)]

- **Review periods are inconsistent, either 30 or 45 days. The National Trust favors a 45-day review period.**

We used a 45-day review period for commenting on HPCs and NEPA documents but shortened the time frame for HPC amendments and administrative remedies issues.

Timeframes that are built into the process are listed below:

- ✓ 30-day notice for termination of categorical exclusions [XXX.12(a)(4)]
- ✓ 30-day notice for documenting unavoidable adverse effects [XXX.12(a)(6)(i)(G)]
- ✓ 30-day internal Army review of Draft HPC by MACOM and HQDA [XXX.14]
- ✓ 45-day time period for NEPA public review [XXX.15]
- ✓ 45-day time period for Council review of final HPC [XXX.16(c)]
- ✓ 30-day review period for HPC amendment process [XXX.19(d)(3)]
- ✓ 30-day time period to object to Council's certification [XXX.21]

NATIVE AMERICAN TRIBES AND NATIVE HAWAIIAN ORGANIZATION COMMENTS

- **Enforcement: what are the consequences of destroying a site? What recourse does a tribe have? Does the ICRMP (HPC) have the same legal force as the Section 106 process?**
 - ✓ Once in effect, Army alternate procedures will entirely replace 36 CFR Part 800(B) [XXX.3]
 - ✓ Tribes participate in annual review and monitoring process, review past actions and future plans [XXX.12(a)(6)(ii)]
 - ✓ *Administrative Remedies* section added to require consideration of objections [Subpart F]
- **How are disputes resolved when the Army and a tribe do not agree? How are adverse effects to TCPs brought to the appropriate level of attention?**
 - ✓ Added *Administrative Remedies* section [Subpart F]
 - ✓ Tribes participate in the Development and Implementation of HPC [XXX.11 and 12]
 - ✓ SOP included for mitigation of adverse effects and documentation of adverse effects [XXX.12(a)(6)(i)]
 - ✓ SOP for external review and monitoring [XXX.12(a)(6)(ii)]
 - ✓ Ongoing role in the implementation of HPC [XXX.12(a)(6)(v)]
- **Communication with tribes—written notice, copies of all relevant documents, opportunity for meaningful participation. Should be specifically and clearly stated in the regulation.**
 - ✓ Expanded definition of *tribal consultation* [XXX.5]
 - ✓ Definition of *government-to-government relations* further defines consultation responsibilities when working with Federally recognized Indian tribes [XXX.5]
 - ✓ Installation commander responsible for ensuring consultation with tribes allows for a reasonable opportunity to identify concerns on historic properties of significance to them [XXX.6(d)(2)]
 - ✓ Coordinator of Native American Affairs' role in facilitating Army/tribal consultation [XXX.9(b)]
 - ✓ Consulting parties provided adequate documentation, continue throughout HPC development [XXX.11(b) and (c)]

- ✓ Consultation for inadvertent discovery and for Emergency Actions must be mutually acceptable and expeditious [XXX.12(a)(6)(iii)]
- **Regulations could be interpreted as limiting tribal involvement to what is strictly required by statute—a violation of the spirit of government-to-government relations and trust responsibilities. Regulations should consistently recognize the need to involve tribes that are culturally affiliated.**
 - ✓ Added definition of *government-to-government relations* and referenced in tribal consultation [XXX.5]
 - ✓ Relationship is now a responsibility of installation commander [XXX.6(a)(1)(iv)(G)]
 - ✓ Government-to-government relationship between installation commander and tribes referenced under tribal description in the *Participants* section [XXX.6(d)(1) and (2)]
 - ✓ SOP for section 106 participant role in HPC implementation, must provide for consultation with tribes on a government-to-government basis [XXX.12(a)(6)(v)(A)]
- **The regulation does not clearly state that tribes possess expertise regarding TCPs**
 - ✓ This was addressed in XXX.13(d)
 - ✓ Also included a reference to THPOs for tribal expertise [XXX.13(e)]
- **Concerns about inadvertent discovery and the handling of culturally sensitive artifacts. No mention of NAGPRA.**
 - ✓ Requirements for NAGPRA are addressed in AR 200-4 [XXX.1(a)(3)]
 - ✓ Added section on inadvertent discovery [XXX.12(a)(6)(iii)]
- **Confidentiality of information still a concern**
 - ✓ Included in PLS under HPC development section [XXX.12(a)(2)(vi)]
- **Interested parties definition still problematic**
 - ✓ Term interested party removed from the procedures
 - ✓ Tribes defined as a consulting party [XXX.5]
- **Clarify issue of professional standards and their applicability to tribes and NHOs**
 - ✓ Definition of *professional standards* broadened to include tribes without regard to professional standards [XXX.5]
- **Request signatory authority for HPCs**
 - ✓ This was granted in XXX.15(b)(2)
- **Review time – less than 30 days is not adequate**

All review times in the procedures are either 30 or 45 days. The alternate procedures do not include any review period that is less than 30 days. Timeframes that are built into the process are listed below:

 - ✓ 30-day notice for termination of categorical exclusions [XXX.12(a)(4)]
 - ✓ 30-day notice for documenting unavoidable adverse effects [XXX.12(a)(6)(i)(G)]
 - ✓ 30-day time period for internal Army review of Draft HPC by MACOM and HQDA [XXX.14]

- ✓ 45-day time period for NEPA public review [XXX.15]
- ✓ 45-day time period for Council review of final HPC [XXX.16(c)]
- ✓ 30-day review period for HPC amendment process [XXX.19(d)(3)]
- ✓ 30-day time period for objection to Council's certification [XXX.21]
- **Remove references to governing body of an NHO and government-to-government consultation for NHOs, this is not correct.**
 - ✓ We recognize this was an error and it has been corrected in the alternate procedures
- **Concerns with categorical exclusions**
 - ✓ SOP for categorical exclusions to be determined with consulting parties [XXX.12(a)(6)(iv)]
 - ✓ Excluded undertakings that address undertakings on tribal lands [XXX.18(a)(4)]
- **Include a section on Army activities on tribal lands**
 - ✓ Army follow tribal regulations in lieu of Army's procedures regarding undertakings on tribal lands [XXX.18(a)(4)]
- **Concern with Tribal involvement in identification and treatment**
 - ✓ Identifies up front in the *Purpose* section, the role of consulting parties [XXX.1(b)(3)]
 - ✓ Clarifies involvement of consulting parties in HPC development [XXX.11(c)]
 - ✓ Requires close coordination with tribes in implementation process [XXX.12(a)(6)(v)(B)]
- **Tribes want equal level of authority with the SHPO when a TCP is affected (where there is no THPO)**
 - ✓ Both SHPO and tribes listed as consulting parties [XXX.1(b)(3) and XXX.5]
 - ✓ Revised participants section to ensure greater parity between SHPO and THPO [XXX.6(c) and (e)]
 - ✓ Both SHPO and tribes included in identification of consulting parties to HPC development [XXX.10(a)(1) and (3)]
 - ✓ Both included in HPC implementation section [XXX.12(a)(6)(v)(A) and (B)]
 - ✓ Both SHPO and tribal roles are included in *Participant and Public Review* section [XXX.15(b)]
 - ✓ Criteria for certification includes a requirement for consultation with both [XXX.16(a)(2) and (3)]
 - ✓ Both SHPO and tribes included in Major Amendment process [XXX.19]

III. THE ARMY ALTERNATE PROCEDURES: A BRIEF SUMMARY

Subpart A: Introduction

This subpart stresses the need for proactive planning and management by the Army to comply with historic preservation laws and regulations. The revised draft clarifies the roles and responsibilities of Headquarters, Department of the Army (HQDA), Major Commands (MACOMs) and installations. Compliance authorities and responsibilities are used primarily at the installation command level

The significant role of consulting parties has been identified early in the document, and emphasizes the importance of early and continued participation for successful management of an installation's historic properties. The purpose statement also stresses the fact that "these alternate procedures establishes minimum requirements for compliance" and encourages installations, consistent with mission requirements to set historic preservation goals that exceed the standards set by these procedures.

The cornerstone of the Army's alternate procedures is the Historic Properties Component (HPC) of the Integrated Cultural Resources Management Plan (ICRMP). It is beyond the statutory authority of section 106 participants to review an entire ICRMP because it addresses cultural resources laws and regulations beyond NHPA, such as the Native American Graves Protection and Repatriation Act and the Archeological Resources Protection Act. The Army has independent responsibility to comply with these statutes outside of the section 106 process. To this effect, the alternate procedures clarify that the HPC is the focus of these alternate procedures that will, once approved, stand in place of 36 CFR Part 800(B).

In order to provide flexibility, the application of these procedures is optional. An installation commander may choose to comply with either the procedures set forth in this part or to continue to comply with 36 CFR Part 800. Installations are encouraged to revisit this determination on a periodic basis.

The Definitions section has been changed in some detail. Several definitions have been added in this draft. An attempt has been made to define the term *government-to-government relations* as it has been used in Presidential Executive Orders, since there was no model definition to use as guidance. We added *area of potential effects* back into the alternate procedures and added a definition for *coordination* to help distinguish this from the more formal process of *consultation*. We also added the term *Historic Properties Component (HPC)* to identify the portion of the ICRMP that pertains specifically to the Army's section 106 compliance process. A final addition is the term *annual review and monitoring* which defines the critical process of meeting with consulting parties to assess past activities and to plan for future activities. The term *installation* was redefined to provide more flexibility for the Army. And lastly, we removed a number of terms that describe internal Army reporting and auditing systems.

Subpart B: Applicability of Procedures

This subpart establishes an optional process under which an installation may either follow these procedures in lieu of 36 CFR Part 800 or may continue to comply with 36 CFR Part 800. When using the alternate procedures process, an installation commander must notify consulting parties of this decision, establish the required program elements, and complete the certification process in order to comply with these procedures. Installations are required to make a determination which procedure it chooses to operate under within two years from the effective date of these procedures.

Subpart C: Program Elements for Participating Installations

This subpart outlines the requirements for installation certification. The Cultural Resources Manager (CRM) position is required, and the duties, responsibilities, and minimum standards needed to fill this position are provided. These procedures state that the CRM position is one of program management as opposed to that of a technical cultural resources professional. Consistent with Army Regulation 200-4, Cultural Resources Management (AR 200-4), appointment of a Coordinator of Native American Affairs position is included and recommended; duties, responsibilities, and minimum standards are also identified. Both the CRM and Coordinator for Native American Affairs, along with the consulting parties and installation staff, are integrally involved in the development of the HPC.

Prior to developing an HPC, the alternate procedures require that an installation must identify all consulting parties and the requirements for bringing these consulting parties into the HPC development process. The intent of this step is to ensure that consulting parties are fully involved early in the process and throughout the development of the HPC.

Development of the HPC focuses on establishment of management goals and practices required by installations to implement day-to-day activities that affect historic properties. The HPC also requires development of Standard Operating Procedures (SOPs) for guiding an installation through identifying and evaluating undertakings, applying best management practices, involving consulting and interested parties, reviewing alternatives, and mitigating adverse effects when effective management cannot be achieved. The SOPs were streamlined to more consistently address all categories of historic properties rather than emphasizing historic buildings as the second draft of the counterpart regulations was perceived to do. Additional SOPs are required for addressing inadvertent discoveries and emergency actions, considering National Historic Landmarks, determining categorical exclusions, sharing public data, defining external installation review and monitoring, and establishing the role to be taken by consulting parties in implementation of a certified HPC.

A significant development in the alternate procedures is the requirement that installations develop an SOP for conducting annual review and monitoring of specific undertakings with its section 106 participants. This review and monitoring process is not a consultation requirement, but instead a process by which an installation coordinates with consulting parties to monitor past undertakings and consider management of upcoming

undertakings. This process also allows an installation and its section 106 participants to identify amendments that may be necessary to the HPC.

While CRM positions do not have to be filled by cultural resources professionals, this subpart requires an installation to have access to professional expertise to carry out historic preservation responsibilities under these alternate procedures. This subpart stresses the use of Indian tribes and Native Hawaiian organizations to identify and assess properties having traditional and cultural importance to them, as well as the use of expertise offered by State and Tribal Historic Preservation Offices (SHPOs/THPOs). This section also makes clear that consulting parties (e.g., SHPOs/THPOs, Tribes, etc.) continue to be actively involved in HPC implementation. The type and level of involvement is to be worked out locally through the development of SOPs.

Subpart D: Program Review and Certification

This subpart sets out the timeframe for completion of an installation's HPC. It identifies the process used by an installation to obtain internal Army review, review by external participants and the public, and Council review and certification. The installation commander exercises authority in preparing and implementing the installation's HPC through his or her signature. The installation commander invites consulting parties to sign the final HPC in recognition of their continued role in HPC implementation. In this way, the HPC, as a programmatic approach to an installation's compliance with section 106, parallels formal memorandum of agreement documents established by Council regulations, and is consistent with the current approval process established by the Army under AR 200-4. This section also addresses categories of undertakings excluded from these procedures.

Subpart E: Amendment and Recertification

This subpart establishes the process for plan amendment and recertification. The plan amendment process was broken out into two separate categories—Minor Amendments and Major Amendments—to provide installations with maximum flexibility to accommodate changed circumstances during HPC implementation. Minor amendments to the HPC can be made by issuing a Notice of Change and without the need for further consultation. Under this approach, an installation can add new properties to the planning level survey or appoint a new CRM without renegotiating the HPC with consulting parties.

Major plan amendments can be made through a streamlined consultation process. While the second draft of the counterpart regulations only allowed for changes when an installation was recertifying its HPC, the revised process in this subpart allows for amending an HPC when an installation and section 106 participant agree that the HPC is no longer meeting the historic preservation needs of the installation. The recertification section was also significantly revised and expanded to address both internal and external coordination.

Subpart F: Administrative Remedies

This new section establishes administrative remedies for dealing with objections to HPC certification and implementation. This allows participants in the process to object to the Council's certification of an installation's HPC, or to object how an installation is carrying out its responsibilities under a certified HPC. This section was developed in response to requests for a dispute resolution section. It also limits the risk of increased liability by requiring aggrieved parties to seek administrative resolution prior to initiative litigation.

Subpart G: Council Review of Army Compliance

This section ensures that the Council carries out its statutory responsibilities for oversight of the section 106 process. It allows the Council to review Army programs and installation compliance with certified HPCs and to assist the Army in making their programs more efficient or to correct major deficiencies. If the Council determines that the Army's alternate procedures are no longer consistent with the Council's regulations, the Council may terminate the procedures. The Council may also terminate an installation's HPC when persistent non-compliance is demonstrated and corrective measures are not forthcoming. If, after consultation, issues concerning systematic deficiencies cannot be resolved, this subpart may result in installations reverting to follow 36 CFR Part 800, rather than continuing under an installation's HPC. This subpart also allows an installation commander to elect not to resolve HPC deficiencies by removing the installation from the alternate procedures process and reverting to follow 36 CFR Part 800.